STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of **BOYCE HYDRO POWER, LLC**, against **CONSUMERS ENERGY COMPANY** concerning disputed costs for communication and protective equipment.	)))))	Case No. U-17930

At the April 28, 2017 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

Procedural History

On September 22, 2015, Boyce Hydro Power, LLC (Boyce), filed a complaint against Consumers Energy Company (Consumers) regarding disputed costs for communication and protective equipment. In its complaint, Boyce alleged that Consumers was attempting to shift its costs and responsibilities relating to the Sanford plant maintenance to Boyce in violation of the companies' interconnection agreement, as amended.

On November 23, 2015, a prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ). The Commission Staff (Staff) also participated in the proceedings. On July 5, 2016, a motion hearing was held before the ALJ, during which she denied Boyce's motion to strike a portion of the testimony of Consumers' witness, Theresa K. Martinez. The ALJ also denied cross-motions for summary disposition that had been filed by both parties.

On July 18, 2016, an evidentiary hearing was held before the ALJ. Boyce presented the testimony and exhibits of Frank O. Christie and Ronald L. Harrie. Consumers presented the testimony and exhibits of Theresa K. Martinez and Rosanna R. Kallio. The record consists of 238 pages of testimony and 30 exhibits.

On August 31, 2016, Boyce and Consumers each filed an initial brief. On September 14, 2016, each filed a reply brief. The Staff did not file an initial or reply brief. On December 22, 2016, the ALJ issued her Proposal for Decision (PFD). On January 24, 2017, Consumers filed exceptions to the PFD. On February 14, 2017, Boyce filed replies to exceptions**.**

Overview

Boyce, owner of the Sanford hydroelectric plant located on the Tittabawassee River in the village of Sanford, Michigan, is the current successor party to a 1923 contract with Consumers (f/k/a Consumers Power Company) that sets forth obligations to be fulfilled by each of the two parties for the purpose of Boyce providing hydroelectric power to Consumers for resale to its customers (1923 Agreement). Exhibit BHP-1. The contract has been amended numerous times, most recently in January 2014 (9th Amendment) when a price adjustment for power was agreed upon. Exhibit BHP-2, pp. 62-63. Prior to that the most recent amendment was the January 2007 8th Amendment and noted that the Sanford plant was now licensed by the Federal Energy Regulatory Commission (FERC), and included various pricing and licensing requirements related to the FERC licensing. The 8th Amendment also noted that, "except as expressly set forth herein, all terms and conditions of the [1923] Agreement as heretofore amended shall remain in full force and effect." Exhibit BHP-2, pp. 58-60.

In 2014, as part of routine maintenance, Boyce rewound a generator and replaced a damaged turbine at the Sanford plant. Prior to the time of turbine replacement, the FERC had added a new

licensing requirement that the plant discharge a minimum flow of at least 210 cubic feet per second (cfs) at all times into the downstream water, whereas the current turbines could not be run when the river flow was below 600 cfs. To meet this new discharge standard, a higher capacity turbine was installed resulting in an increase of 125 kilovolt amps (kVA) of nameplate capacity.[1] The advanced winding insulation materials also resulted in increased generator capacity. Before reconnecting the generator to Consumers' system, Consumers required Boyce to file an interconnection application, reasoning that the new turbine was a modification to the plant and thus controlled by the Commission's Electric Interconnection and Net Metering Standards (Interconnection Rules) established by the Commission in its September 11, 2003 order in Case No. U-13745, and revised to include rules governing net metering in its May 26, 2009 order in Case No. U-15787.[2] 3 Tr 92-96; PFD, pp. 2-19.

Initially, Boyce agreed with Consumers and filed the requisite paperwork. Exhibit BHP-4. As part of the interconnection process, a study was conducted that revealed significant islanding risks in Consumers' distribution system, requiring the installation of Direct Transfer Trip (DTT) and Remote Terminal Unit (RTU) communications connections on the system at a cost of approximately $160,000, as well as installation of related communications equipment at a cost of approximately $30,000 per year. Exhibit BHP-5. Later, Boyce decided that an interconnection application was not required and attempted to withdraw its filing. Consumers refused to accept the withdrawal. PFD, pp. 2-23.

[1] Nameplate capacity on each turbine is stated in kVA. Actual electrical output is measured in kilowatts (kW). 3 Tr 96. Kilowatt and kVA (volts times amps) are mathematically equivalent. 3 Tr 129.

[2] The rules are set forth in full at Mich Admin Code, R 460.601 *et seq.*

The parties disagree as to whether the Interconnection Rules or the 1923 Agreement apply to the situation, whether the repairs constitute material modifications to the plant, and whether the repairs resulted in the islanding risks or merely revealed long-standing islanding risks. From this situation, a disagreement arose that, ultimately, is a conflict over which company should pay for the DTT and RTU connections. *Id*.

Proposal for Decision

In her PFD, the ALJ set forth a full and detailed discussion of the positions of the parties and her recommendations to the Commission. As such, it will not be repeated in this order, except as needed for purposes of clarity.

The ALJ addressed the issue of whether or not Rule 460.622 (Rule 22) of the Interconnection Rules applies to the facts and circumstances that were the subject of this hearing. Rule 22 states:

> The applicant shall notify the electric utility of plans for any material modification to the project. The applicant shall provide this notification by submitting a revised uniform application form and application fee along with all supporting materials that are reasonably requested by the electric utility. The applicant may not begin any material modification to the project until the electric utility has approved the revised application, including any necessary engineering review or distribution system study. The application shall be processed in accordance with R 460.620.

Regarding whether Boyce made material modifications to the Sanford plant thus bringing Rule 22 into force, Ms. Martinez, a Distribution Agreements Engineer in Consumers' Energy Delivery, Electric Customer Service and Infrastructure group, testified that the Interconnection Rules define a material modification as "a modification that changes the maximum electrical

output of a project."[3] She also testified that when reviewing Boyce's repair and maintenance work at the Sanford plant, it was clear that material modifications were being performed because the work increased the installed capacity of one unit from 1375 kW, to the higher capacity of 1500 kW (also referred to by Ms. Martinez as 1375 kVA and 1500 kVA, which is the capacity as listed on the nameplate of the turbines). Thus, Ms. Martinez asserted, the capacity for the plant increased from a total capacity of 4.125 megawatts (MW) to a total capacity of 4.25 MW. She averred that nameplate capacity was the proper criteria with which to evaluate whether a material modification had occurred and, therefore, Rule 22 of the Interconnection Rules must be applied to the situation. Ms. Martinez also pointed out that Boyce, itself, did not disagree that the Interconnection Rules applied, hence, its Interconnection Agreement application. 3 Tr 165-166, 173-182.

Boyce asserted its position that Rule 22 cannot apply to this situation because the new turbine did not constitute a material modification within the meaning of the Interconnection Rules. Frank O. Christie, general manager for Boyce, and operator of the Sanford plant, testified that the actual electrical output of the Stanford plant is less than its rated capacity. He explained that the capacity rating of a generator is a number that reflects its potential maximum output level, but actual output is "primarily a function of the volume of water that can run through the turbine, the head (or pressure) that is present to push the water through, and the overall efficiency of the turbine/generator. Secondary factors are the amount of energy consumed by the station during operations and the amount of energy lost through the generator and cabling system to the point of the sale. Therefore, if the volume of water and the head do not change, it is immaterial what the

[3] Rule 460.601b(c) of the Interconnection Rules provides that "'[m]aterial modification' means a modification that changes the maximum electrical output of a project or changes the interconnection equipment, including either of the following: (i) Changing from certified to noncertified equipment. (ii) Replacing a component with a component of a different functionality or UL listing."

installed capacity of the generator is." 3 Tr 96. Mr. Christie averred that actual output is the appropriate measure by which to determine whether a material modification has taken place. *Id*., 96-97, 142-143.

Mr. Christie continued that, in the case of the Sanford plant, the newly installed equipment increased the efficiency of the updated turbine, but when all three generators are running, physical restrictions at the water intake negate the increased efficiency. The maximum output of any one generator is usually within the 1340 to 1360 kW range, with a historic peak of 3750 kW. Therefore, the overall maximum project output will not increase as a result of the rewound generator and newly installed turbine. *Id.* Mr. Christie expressly disputed that Boyce's Interconnection Agreement application constituted agreement that Boyce had materially modified the plant. 3 Tr 112-114; PFD, p. 20.

Consumers countered Boyce's maximum output claim, stating that Consumers' "records show that [Sanford] plant output exceed[ed] that amount [3750 kW] 20 times over the last 11 years, with a chart at [3] Tr 183 showing a maximum output of 3810 kW in 2006, with a maximum in three other years of 3780, 3789, and 3786 kW." PFD, p. 17. Ms. Martinez also cited Exhibit A-16, which indicates Boyce's statement that capacity would increase by 0.2 to 0.25 MW. 3 Tr 182-183. Boyce rebutted that, according to the Interconnection Rules,[4] the Sanford plant is only a part of the Boyce project as a whole, and asserted that overall maximum output will not increase as a result of the maintenance work performed on the Sanford generator and turbine. 3 Tr 112.

The ALJ stated that Boyce was correct in its interpretation that the Interconnection Rules define a project as the whole of the Boyce plants. She also opined that the text of the

[4] R 460.601b(i) states that "'Project' means electric generating equipment and associated facilities that are not owned or operated by the electric utility."

Interconnection Rules supports Boyce's interpretation that output should be used to determine whether a material modification has taken place and cited an example contained in Case No. U-15787 as additional support for this interpretation.[5] She reasoned that if the Commission had meant to define a "material modification" in terms of nameplate capacity, it would have done so because it used that term specifically when discussing net metering. As stated in the citation from Case No. U-15787, the ALJ attested, that the Commission intends for the energy capacity, and not the energy rating, to be used. PFD, pp. 42-46.

Next, the ALJ noted that, using Consumers' power factor of 0.8 for each of the turbines, the nameplate designation of 1375 kVA is converted to a maximum electrical output of 1100 kW, but, using Boyce's asserted actual power factor of very close to 1.0,[6] a nameplate capacity of 1375 kVA is essentially equivalent to 1375 kW or 1.375 MW. In comparing maximum historic total nameplate capacity using a factor of 1, the historic readings fall well below the pre-updated 4.125 MW total nameplate capacity. Accordingly, even when considering Consumers' numerous arguments to the contrary, the ALJ opined, no material modification has taken place. PFD, pp. 42-51.

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[5] *See,* the March 18, 2009 order in Case No. U-15787, pp. 11-12: "Syndevco commented that it was not clear whether the addition of more generating capacity, that does not exceed the rating of the inverter for a category 1 system, would require additional approval by the utility. For example, a homeowner initially installs solar panels with a capacity of 2.5 kW connected to an inverter with a rating of 10 kW. A few years later, the homeowner installs additional panels with a capacity of 5 kW, for a total capacity of 7.5 kW. The Commission finds that this hypothetical does not present a "material modification" to the project as defined in R 460.601b(c), thus R 460.622 does not apply. The Commission finds that a customer who proposes to increase generation capacity, even if a larger inverter is not required, should apprise the utility of his plans. Because this specific scenario does not describe a material modification to the project, a new application or additional fee is not required."

[6] *See*, 3 Tr 131-132.

Mr. Christie testified that the original 1923 Agreement had an initial term of 99 years and remained in effect as of the date of the hearing. The agreement was not entered into under the Public Utility Regulatory Policy Act (PURPA) which was not enacted until 1978, however, the Sanford plant is a registered Qualifying Facility[7] under that Act. He explained that Section 6(g) of the 1923 Agreement states that "the second party [Consumers] agrees to keep in repair and maintain the necessary apparatus for receiving of such energy so delivered, and its transmission line connecting the point of delivery with the second party's distribution system." 3 Tr 87-88; Exhibit BHP-1, Section 6(g).

Mr. Christie went on to state that later amendments provided that [Boyce] is to provide to Consumers "sites acceptable to [Consumers] for outdoor substations and transformer banks, and for all equipment and apparatus necessary for the proper receipt, protection and transformation of the energy received by [Consumers]." 3 Tr 88; Exhibit BHP-1, Section 8; Exhibit BHP-2, Amendment 3, Section 5. The property was provided without expense to Consumers, and in exchange, among other commitments, Consumers agreed to "at all times construct and maintain its 60 cycle system in a first-class modern manner and condition so as to render it capable and efficient and free, so far as reasonably possible, of liability to accident, damage, or destruction from anything or cause excepting only acts of God including fires and/or damage caused by lightning or electricity or violent storms." 3 Tr 88-89; Exhibit BHP-1, Section 24. Mr. Christie opined that the intent of the 1923 Agreement and its Amendments is clear in giving Consumers the responsibility of maintaining its system, including the costs of necessary upgrades, and

[7] *See,* 18 CFR 292.101(B). A registered Qualifying Facility (QF) is a generating facility which meets the requirements for QF status under PURPA and so receives special rate and regulatory treatment.

including the Sanford-specific facilities discussed in the 1923 Agreement and its Amendments. *Id.*; Exhibit BHP-2, Amendment 3, Paragraph 4.

Consumers' witness, Ms. Martinez, testified to two reasons why Section 6g of the 1923 agreement does not apply to this situation: (1) Section 6g requires only such apparatus as necessary for the receiving of energy so delivered by Boyce; and (2) neither the RTU nor the DTT are transmission lines. *See*, 3 Tr 186. She goes on to assert that even if RTU and DTT equipment are considered necessary for receiving energy, the only duty placed on Consumers is that it repair and maintain the equipment. The equipment is not installed and Consumers cannot repair and maintain equipment that is not there. Ms. Martinez continued that she believes Section 8, as amended by Section 5 of the Third Amendment, does not apply to the instant case either. She avers that the Third Amendment transfers property rights from Boyce to Consumers for equipment that already exists near the Sanford plant. There is no RTU or DTT equipment on the site. Accordingly, she argues, the Third Amendment is not relevant. She contends that neither is Section 24 of the 1923 Agreement relevant as it is solely a *force majeure* clause and that, even if Section 24 did apply, there is no provision that requires RTU and DTT equipment as a result of a *force majeure*. *See*, 3 Tr 187-191. Ms. Martinez, citing Exhibit A-19, continues that even Boyce admitted that there were no inconsistencies between the 1923 Agreement and the Interconnection Rules, and that past practice between the parties supports Consumers' position. *Id*, pp. 192-194.

In finding that Rule 22 does not apply, the ALJ reasoned that: (1) the changes made by Boyce to the Sanford plant were initiated under the parties' 1923 contract, as amended, and not under the Interconnection Rules; (2) the application of the Interconnection Rules would require a revised interconnection agreement without regard to the terms of the existing agreement; and (3) Section

10e of 2000 PA 141, MCL 460.10e,[8] does not permit modification of the existing contract between Consumers and Boyce. In any case, the ALJ found that the changes Boyce made to its turbine did not constitute a "material change," and so Rule 22 would not apply even had the Interconnection Rules themselves, rather than the 1923 Agreement applied to this situation. PFD, pp. 32-54.

The ALJ also advised that, although Boyce filed an interconnection application, the company was within its rights to change its position to that of no interconnection application should have been required. The ALJ noted that Consumers had not informed Boyce that an interconnection application, in this case, was required only for a material modification, and not a nonmaterial modification. Even in its letter to Boyce refusing to allow withdrawal of the application, Consumers informed Boyce that an application is needed for a "modification" and that the new turbine is a "modification." Exhibit A-14; 3 Tr 172-173; PFD, pp. 54-55. Ms. Martinez continued with the assertion that Boyce admitted it was proposing an increase in capacity when it filed the application. 3 Tr 173-174. However, the ALJ was satisfied that Boyce had filed the application solely because Consumers insisted the company do so and that the company did not evaluate the legal test under the Interconnection Rules until it sought legal counsel. PFD, pp. 54-55.

Concluding that "the Interconnection Rules do not abrogate the existing contractual agreement between Boyce and Consumers,"[9] the PFD addressed whether Consumers had an independent obligation under the 1923 Agreement to install anti-islanding protection, given that Consumers'

[8] MCL 460.10e *et al.* provides for the connection of merchant plants to the transmission and distribution systems within their operational control, for the sale of capacity to alternative electric suppliers, electric utilities, municipal electric utilities, retail customers, or other persons, and for the Commission to establish standards for the interconnection of merchant plants with the transmission and distribution systems of electric utilities. The statute provides that the Commission standards do not apply to generating facilities with a capacity of less than 100 kilowatts nor does the statute apply to interconnections or transactions that are subject to the jurisdiction of the FERC.

[9] *See*, PFD, p. 55.

islanding analysis showed a pre-existing need for such protection. Exhibit BHP-5. The anti-islanding protection at issue consists of the DTT and/or RTU.[10] The ALJ was not persuaded by Consumers' arguments that the 1923 Agreement does not apply to the instant situation, stating that "[a]lthough Consumers Energy correctly argues that the agreement as a whole should be considered in interpreting the agreement, it fails to persuasively identify any language in the agreement that is inconsistent with the conclusion that Consumers Energy should have already installed islanding protection for its distribution system . . ." PFD, p. 62. She also found that Sections 6g, 8, and 24 should be interpreted as obligations on the part of Consumers to install equipment that is consistent with IEEE standards as testified to by Consumers' witness, Rosanna R. Kallio.[11] The ALJ noted that the 33% threshold in the Institute of Electrical and Electronics Engineers' (IEEE) standard was significantly exceeded prior to the maintenance work and that the 1923 Agreement "clearly contemplates an increase in capacity of the plants, although Boyce is obligated to obtain Consumers Energy's approval for new equipment." PFD, pp. 64-65. She deduced that Consumers had a pre-existing obligation to install anti-islanding protection. *Id.*, p. 65.

The ALJ concluded that: (1) maintenance activities at the Sanford plant were within the scope of the existing 1923 Agreement, and are not covered by the Interconnection Rules; (2) an increase in nameplate capacity of one of the generators at a hydroelectric plant is not necessarily a "material modification" under the Interconnection Rules; (3) maintenance activities at the Sanford plant, including the new turbine and rewound generator, did not increase the maximum electrical

[10] Matters relating to Current Transformers and Potential Transformers were resolved prior to the contested hearing. PFD, p. 3.

[11] *See*, 3 Tr 226-235; PFD, pp. 55-65.

output of the plant, and were not a "material modification" under the Interconnection Rules; (4) the maintenance activities at the Sanford plant did not materially increase the pre-existing islanding risk on Consumers' distribution system; (5) if maintenance activities at the Sanford plant are covered by the Interconnection Rules, these maintenance activities did not result in a material modification under Rule 22; and (6) the 1923 Agreement assigns to Consumers the responsibility to install and maintain islanding protection for its distribution system, subject to the obligations of Boyce to provide property rights and access to Boyce's property as provided in the agreement. PFD, pp. 65-66.

Exceptions

In its exceptions to the PFD, [12] Consumers contends that the Interconnection Rules must apply to the situation regardless of the existence of the 1923 Agreement. In its "Statement of Facts," the company sets forth an abbreviated version of the process required by the Interconnection Rules for Boyce to connect with Consumers' distribution system. Consumers continues to argue its original point that the changes to the Sanford plant constitute material changes within the meaning of the rules. Consumers' exceptions, pp. 4-15.

Consumers asserts that outcomes not required by a contract cannot be imposed by the Commission, and that the PFD erroneously finds various provisions of the 1923 Agreement require Consumers to pay for the RTU and/or DTT upgrades. *Id.*, p. 15.

In support of the above, Consumers continues to argue that the RTU and DTT are neither a transmission line nor a part of the equipment that receive energy so delivered. In any case, the

[12] It is noted that Consumers initially cited incorrect Administrative Hearing Rules in its exceptions to the PFD filing. Boyce raised this error in its reply to exceptions, and Consumers has since corrected its filing. *See*, Consumers' exceptions, p. 1; Consumers' errata to exceptions; Boyce's reply to exceptions, pp. 2-6.

company cannot repair and maintain that which is not currently installed, *i.e.* RTU and DTT devices. Therefore, Section 6(g)[13] of the 1923 Agreement cannot apply. Consumers' exceptions, pp. 17-19.

Consumers further claims that Section 8[14] of the contract creates only an obligation for Boyce to convey real property rights for the equipment and apparatus necessary for proper receipt, protections, and transformation of energy received by Consumers. Consumers avers that it has no obligation to provide the RTU and DTT under this portion of the 1923 Agreement because the equipment has never been installed, Consumers has been receiving energy from the Sanford plant for decades, and thus, the equipment is not necessary. Consumers' exceptions, pp. 19-21.

Consumers contends that the word "proper" in Section 8 of the 1923 Agreement should not be read in conjunction with Section 24[15] of the contract. The company claims that Section 24 is a *force majeure* clause intended to apply only in such situations, and that to believe otherwise would require Consumers to have an open-ended obligation without reasonable limitation. Consumers continues with its assertion that making Section 24 applicable in this instance would be to ignore its overall context within the contract, and jump to a conclusion that imposes responsibilities that are not there. Consumers' exceptions, pp. 21-24.

Consumers alleges that the PFD did not cite any reference to IEEE standards in the 1923 Agreement and so should not find that the company had a prior obligation to comply with these standards. Further, Consumers believes that, even if the contract requires IEEE standards

[13] *See*, Exhibit BHP-1, pp. 34-35.

[14] *See*, Exhibit BHP-1, p. 35.

[15] *See*, Exhibit BHP-1, p. 39.

compliance, there is nothing in the standards that imposes the obligation on the utility. Consumers' exceptions, pp. 24-25.

Consumers continues its exceptions, asserting that January 8, 1987 correspondence with Wolverine Power Corporation (Wolverine),[16] shows a past practice that should apply to the successor party. The correspondence from Consumers to Wolverine indicates, in pertinent part, that certain relay switches should be installed at the Sanford plant and that Wolverine is responsible for the cost. Exhibit A-17, pp. 1-5. October 12, 1987 correspondence from Wolverine to Consumers indicates that relay switches have been installed. Exhibit A-18; Consumers' exceptions, pp. 26-28.

Consumers closes its exceptions by reasserting that the Interconnection Rules apply to the instant case because it believes Boyce made material modifications to the Sanford plant, nameplate capacity is the proper method by which to determine whether a material modification has taken place, and Boyce filed an interconnection application. Consumers' exceptions, pp. 26-52.

In its reply to exceptions, Boyce avers that Consumers' exceptions merely rehash its initial arguments and raise few new arguments. Boyce disagrees with Consumers that the PFD ignored basic contract law, and disagrees that the provisions of the rules and contract were not thoroughly analyzed and discussed by the ALJ. Boyce contends that the PFD thoroughly explored Consumers' responsibilities, "including Sections 6, 8, and 24 of the original agreement, the third 'witnesseth' clause of the Third Supplement and Amendment, Section 1 to the Third Amendment, and the Wolverine correspondence that Consumers offered as Exhibits A-17 and A-18." Boyce's reply to exceptions, p. 7. Boyce also asserts that in addition to the thorough review of the substance of the provisions of the 1923 Agreement, the ALJ provided a detailed discussion of the

[16] Boyce is the successor party to Wolverine in the 1923 Agreement.

contract as a whole. Boyce's reply to exceptions, pp. 6-8; PFD, pp. 55-65. Boyce agrees with the ALJ's analysis and recommendations. Boyce's reply to exceptions, p. 24.

Discussion

Whether the Interconnection Rules apply is at the heart of the dispute in this proceeding. If the Interconnection Rules are applicable, then Boyce and Consumers must comply with the provisions contained therein. If they are not, then the Commission may look to another authority for guidance regarding the parties' rights and responsibilities. In this case, the parties have a contract that predates the Interconnection Rules that they have relied on since 1923 to define their individual rights and responsibilities. PFD, pp. 2-3.

When analyzing the competing claims of the parties it is important to understand the context in which the interconnection rules were developed. These rules were promulgated as part of the regulatory framework created by 2000 PA 141 (Customer Choice and Reliability Act), MCL 460.10 *et seq* (Act 141). Section 10(2) of Act 141 states that the purpose of sections 10a through 10bb of the Act is:

a) To ensure that all retail customers in this state of electric power have a choice of electric suppliers.
b) To allow and encourage the Michigan public service commission to foster competition in this state in the provision of electric supply and maintain regulation of electric supply for customers who continue to choose supply from incumbent electric utilities.
c) To encourage the development and construction of merchant plants which will diversify the ownership of electric generation in this state.
d) To ensure that all persons in this state are afforded safe, reliable electric power at a reasonable rate.
e) To improve the opportunities for economic development in this state and to promote financially healthy and competitive utilities in this state.
f) To maintain, foster, and encourage robust, reliable, and economic generation, distribution and transmission systems to provide this state's electric suppliers and generators an opportunity to access regional sources of generation and

> wholesale power markets and to ensure a reliable supply of electricity in this state.[17]

Section 10(e)(1) of Act 141 directs electric utilities "to take all necessary steps to ensure that merchant plants are connected to the transmission and distribution systems within their operational control." Section 10(e)(3) of the Act directs the Commission to establish standards for the interconnection of merchant plants with the transmission and distribution systems of electric utilities.

Examining the relevant provisions of Act 141, it is clear that the Legislature sought to encourage the development of new sources of electric generation, and for utilities to interconnect with said generation. The Commission's interconnection rules were developed to guide the utilities in complying with the law.

The parties' arguments appear to hinge on whether or not the new turbine and rewound generator constitute a material modification to the Sanford plant, thereby bringing Rule 22 of the Interconnection Rules into operation. While Consumers continues to expound on the alleged material modification of the Sanford plant in its exceptions to the PFD (Consumers' exceptions, pp. 28-39), the ALJ and Boyce have correctly pointed out that the meaning of "project" as used in the Interconnection Rules is the entire hydro-power project owned by Boyce, including its other generating plants on the same system as the Sanford plant.[18] "Project," in this instance, does not refer to a subsection of the project, such as the Sanford plant, or a component of a subsection of the project, such as one turbine and generator at the Sanford plant. *See,* footnote 4. Accordingly,

[17] 2016 PA 341 amended MCL 460.10, effective April 20, 2017. The amendment eliminated section (1) and modified section (2) by eliminating subsections (a) through (c) and renumbering subsections (d), (e), and (f) as (a), (b) and (c).

[18] *See*, PFD, pp. 43-44; 3 Tr 112.

the evidence of record regarding the nameplate capacity of the new turbine at the Sanford plant, and its impact on the aggregate nameplate capacity of the Sanford plant alone is not sufficient to establish a material modification of the Boyce project. Therefore, when considering the Boyce project's output and the other factors that affect its output, no material modification has taken place.

As well, the Commission has established that nameplate capacity alone is not the sole measure of a project's energy rating.[19] Thus, Consumers' argument that the nameplate energy rating should be the sole determining factor fails. Even if the Sanford plant were considered one project, the Commission is persuaded by Boyce's evidence that the capacity at the Sanford plant is limited by water pressure and other conditions. Further, the historic maximum output at the plant is well under the prior rating of 4.125 MW, thereby suggesting the likelihood that the new rating of 4.25 MW does not represent an increase in generation capacity.[20] Accordingly, even when measured as a single "project," the evidence is sufficient to establish that no material modification has taken place at the Sanford plant.

Therefore, the Commission finds that the record is sufficient to establish that Rule 22 of the Interconnection Rules does not apply to this situation because no material modification has occurred whether considering the Boyce project in its entirety or the Sanford plant subsection of the project. And because Rule 22 does not apply, the provisions of that rule do not apply, *i.e.* no interconnection application must be filed.

As such, the Commission agrees with and adopts the findings and recommendations of the ALJ, and finds that Consumers incorrectly required Boyce to file an interconnection application,

[19] *See*, footnote 5.

[20] *See*, 3 Tr 28-29.

and Boyce is entitled to withdraw it. Further, because no application for interconnection is required by the Interconnection Rules, Rule 20 is also not applicable to this situation because Boyce is not an "applicant."

Regarding the 1923 Agreement and subsequent amendments and supplements, in addition to the ALJ's analysis, the Commission determines that it is reasonable to find that the provisions of the contract were meant to anticipate future advances and technologies during the tenure of the agreement, in particular, due to the contract's 99-year term, but also due to its references to the construction and maintenance of a "first-class, modern" system (Exhibit BHP-1, Section 24), as well as provisions that Consumers keep in repair and maintain apparatus necessary to receive energy (*Id*., Section 6(g)). Certainly, Consumers is not suggesting that the system be held to only the 1923 standard as to what is modern and first-class, or that it is obligated to maintain and repair only 1923 equipment, or that the equipment and apparatus necessary for the receipt, protection, and transformation of energy has remained unchanged during the past 95 years. Thus, the Commission is not persuaded by Consumers' arguments that the 1923 Agreement is inapplicable because it does not specifically mention DDT or RTU equipment.

Further, the need for equipment to meet the IEEE standards should not be discounted because there is no specific mention in a contract that was entered into before the technology existed. The Commission contends that compliance with IEEE standards is considered to be an integral part of "constructing and maintaining a first class modern system," as agreed to in Section 24 of the 1923 Agreement, notwithstanding other sections of the agreement that have been previously discussed. Accordingly, the IEEE standards are relevant when considering the need for the anti-islanding equipment.

In summary, the Commission is persuaded that the anti-islanding equipment described in this proceeding is to be installed and paid for by Consumers because the equipment is necessary to

fulfill Consumers' contractual responsibility set forth in Section 6(g) of the 1923 Agreement to "keep in repair and maintain the apparatus necessary for the receiving of such energy so delivered" and to fulfill Consumers' obligation set forth in Section 24 to "at all times construct and maintain its 60 cycle system in a first-class modern manner and condition so as to render it capable and efficient and free, so far as reasonably possible, of liability to accident, damage or destruction from any thing or cause excepting only acts of God including fires and/or damage caused by lightning or violent storms." Further, Section 8 states that Boyce grants property rights to Consumers for "all equipment and apparatus necessary for the proper receipt, protection and transformation of energy received by [Consumers]." In addition, the evidence of record is sufficient to establish that the need for anti-islanding equipment existed prior to Boyce's updates at the Sanford plant. PFD, pp. 64-65. Thus, the Commission is persuaded that the 1923 Agreement obligates Consumers to pay for necessary anti-islanding equipment.

Conclusion

For the reasons explained in the PFD, and for the additional reasons set forth in this order, the Commission agrees with and adopts the ALJ's conclusions that:

(1) Maintenance activities at the Sanford plant were within the scope of the existing 1923 Agreement, and are not covered by the Interconnection Rules;

(2) An increase in nameplate capacity of one of the generators at a hydroelectric plant is not necessarily a "material modification" under the Interconnection Rules;

(3) Maintenance activities at the Sanford plant, including the new turbine and rewound generator, did not increase the maximum electrical output of the plant, and were not a "material modification" under the Interconnection Rules;

(4) The maintenance activities at the Sanford plant did not materially increase the pre-existing islanding risk on Consumers' distribution system;

(5) If maintenance activities at the Sanford plant are covered by the Interconnection Rules, these maintenance activities did not result in a material modification under Rule 22; and

(6) The 1923 Agreement assigns to Consumers the responsibility to install and maintain islanding protection for its distribution system, subject to the obligations of Boyce to provide property rights and access to Boyce's property as provided in the agreement.

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THEREFORE, IT IS ORDERED that Consumers Energy Company shall install and pay for the anti-islanding equipment as set forth in Consumers Energy Company's Distribution Study.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of April 28, 2017.

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Kavita Kale, Executive Secretary